THE
MADRAS LAW JOURNAL.

VOL.] JULY, 1928. [LV

THE CHILD MARRIAGE BILL AND THE HINDU MARRIAGES DISSOLUTION BILL.

[As it is not proposed to commit the Journal to any particular view on the above measures, the following memorandum is published as representing the personal opinion of the Editor.]

In three articles published in the 28th Volume of the MADRAS LAW JOURNAL, I have discussed at some length the considerations to be kept in view by the Legislature in this country, when it is called upon to enact laws dealing with questions intimately connected with the religious and social usages of the people. I do not wish to repeat them here but I may observe that I was then dealing with a *permissive* measure, viz., The Post-Puberty Marriage Bill. The present Child Marriage Bill is a *coercive* measure and as such it raises even more fundamental and far-reaching issues. I am bound to state, at the outset, that even if I should agree with the promoters of the measure in the object they have in view I should protest against the means adopted to attain that object; but I may also state that I don't agree with them in their diagnosis of our social ills and in the remedy they propose. While even the strongest apostle of the doctrine of individual liberty must agree that there are certain matters in respect of which the State has got the right to impose its will on the citizen, it cannot, on the other hand, be denied that such categories are strictly limited and well defined. The institution of marriage is not *new* to Hindu Society and the State is not now called in to regulate it as such.

Social reformers in this country have all along maintained that the practice of early marriage has led to untold ills. Those who have differed from them do not shut their eyes to the ills themselves but have differed in their views as to the causes

therefor and the appropriate remedy. I may be pardoned for saying that in this latter category of dissentients are included not merely those who have not had the benefit of Western education but many educated Indians as well.

In discussing this subject, it must be clearly borne in mind that amongst Brahmins—who are the class mainly affected by the proposed legislation—the 'marriage' ceremony is altogether different from "consummation" and that ordinarily an interval of several years separates the two. The reformers' arguments are mainly derived from the existence of child widows of 5 years and less, but marriage at such young age is not due to shastraic injunctions or the force of social opinion and the bringing in of such exceptional instances will only serve to cloud the real issue. The main conflict must be understood to be between those who in obedience to the rules of the Hindu Shastras feel bound to marry their girls between the ages of 10 and 12 and those who would set such restrictions at nought. We have no quarrel with those who in their own domestic concerns prefer to do what they think best, but what is the justification for their *compelling* others to violate the injunction of the Shastras which the latter honestly and sincerely consider are binding upon them. The compulsory age-limit fixed in the Smritis relates only to the marriage ceremony in the sense above explained and not to consummation and that is why the orthodox party insist that the shastraic rules are not really responsible for the ills complained of.

It is often asked what connection there is between religion and the marriageable age. It may as well be asked what relation there is between religion and marriage. The answer will depend on what one may assume to be the basis and proper sphere of religion. The view that marriage should be no more than a 'civil contract' is intelligible enough; but in so far as its 'sacramental' character is granted, it is not illegitimate to insist that the authority on which such sacramental character is founded should be fully respected—and not only so far as we may choose to approve. To this again it is said by way of retort, whether Hindu society has not deviated in many respects from shastraic injunctions. True, it has; but it cannot be maintained that two wrongs make a right. Each deviation, when it *has come* about, may be considered and encouraged or discouraged on its own merits, but one deviation does not necessarily warrant or justify another.

In the present instance, the weakness of the argument based on the hardships of widowhood is shown by the fact that the Widow Remarriage Act of 1857 still remains a dead letter. For the present purpose, however, it is sufficient answer to that argument to state that it can make little difference in this respect whether a girl is married at 12 or at 14.

As to the charge of physical deterioration of the race, the best answer is furnished by the indisputable fact that the Brahmin community has maintained its vitality and its intellectual powers through thousands of years. If recently it has deteriorated, some of us think, it is due to the fact that it has departed from Brahmin ideals and practices. Even to-day, it is a matter of common knowledge that orthodox people enjoy much better health than the English educated classes and our reformers would do well to direct their attention to this aspect of the matter and draw the correct inference. It is a mistake to regard premature maternity as a *necessary* result of the shastraic system of marriage. The proper education of public opinion can without any violation of religious rules or practices bring about a marked advance in the age when consummation is to be permitted. Suppose, on the other hand, a girl who is married at the age of 14 (as prescribed in the Bill) gives birth to half a dozen children or more between her 15th year and her 25th year—and this is quite a common occurrence—where is the improvement of the race which the reformer is in quest of. To be frank, this result can be achieved only by training our youths in habits of continence and self-control—and this will be a more worthy object for the reformer to strive after.

It is then said that early marriage stands in the way of the advance of female education. This again is not a correct diagnosis. It is not the celebration of the marriage that prevents many of us from sending our girls to school, but we think that beyond a certain age it is not desirable to send our girls to mixed schools. With the increase in the number of institutions where girls can receive higher education without mixing with boys, the position may undergo some change but it must also be stated that in the opinion of most of us, the kind of higher education now available in our schools is not what is required for our girls. Whether we are right or wrong in this view, I only wish to emphasise the position that it is not correct to associate the question of female education with the

topic now under discussion as if they stand in any relation of cause and effect.

With reference to the true ideal of marriage and its basic conceptions, such of us as hold the orthodox view are not disposed to give up the conception of the 'religious sacrament' (and all that it implies) in favour of the contractual theory nor are we prepared to believe that a girl of 14 or 16 or even 18 is better fitted to choose a husband for herself than her parents can do or are likely to do for her. A case of an unnatural parent may be found here and there but that can no more justify a generalisation than the instances of 'love' marriages which come before the Divorce Court within a few months of their celebration.

Even assuming that the underlying principle of the Bill is on the whole sound, there are obvious objections to embodying it in a penal statute fixing a statutory minimum—for the offence would have been committed even if the spouses fall short of the minimum age by a few *days*. Take a few instances, which in the present state of our society are quite familiar and note the hardship : (i) A parent (oftentimes the mother) who is seriously ill is anxious to see the daughter married in her own life-time. Any one who knows the Hindu mother's solicitude for her daughter will realise how cruel it would be if the law should step in and say, 'No, it will be some months before your daughter will complete the statutory age, and the marriage shall not take place before that—though you may not live to see it'. And it will be preposterous to suggest that if in such circumstances the marriage is allowed to be celebrated before the statutory age, the girl's interests will be sacrificed. (ii) A girl in her fourteenth year is very near the period of her puberty (if she had not passed it) and the parents are anxious to celebrate her marriage before puberty; but it may easily happen that she will complete 14 only after the month of July, and Brahmins do not ordinarily celebrate marriages between July and December. What is the poor father to do? Wait for the new year in hourly dread of her attaining puberty before that. (iii) Take again the case of a father with two girls aged 14 and 12 respectively. It is common knowledge that the celebration of a marriage involves a heavy financial strain on the parent and not even a stroke of the 'legislative' pen can altogether obviate it—is the father to be told that even if he could find a suitable match for the younger girl he should not

celebrate the two marriages at one time but must incur the same expenditure over again a couple of years later.

The proposed legislation is a serious menace to all who sincerely believe in the binding character of the Hindu Shastras. I know the familiar gibe of the reformer against the orthodox, that the latter will always raise the cry of 'religion in danger'. I am content to leave it to any impartial reader to go through the foregoing paragraphs and decide how far the gibe is in the present instance justified. I hope that our progressive friends will give some of us credit for sincerity of purpose and of conviction. We are as much interested in the welfare of our children as our friends are and likewise in the future of our country. If we differ from them on the present subject, it is because we honestly believe that the time-honoured practice of the land is the best for us all in the long run. Surely, the subject is not so simple nor the experience of other countries so encouraging that any prudent man can afford to dogmatise or maintain that his view *alone* is right. It is extremely unfair that those who hold the orthodox view should be driven to choose between the jail and their religion. It is a matter for the deepest regret that the reforming zeal should create a spirit of uncompromising intolerance for those who differ, the spirit that demands that the proposed law should be enforced by 'deterrent' penalties.

If legislation on the lines proposed is to be persisted in, the utmost that orthodox opinion can be expected to be reconciled to is a minimum age of 12 in the case of girls. Personally I should have no objection to 14 or 15 being fixed as the age for *consummation* and while I do not underrate the difficulties in the way of detecting and punishing breaches of a restriction of that kind, I am of opinion that legislation even of that kind may have some educative effect. I would recommend that even the present Bill should in the main be regarded as only educative and all vindictive punishment should be avoided. The penalty must be comparatively light—imprisonment being in any event out of the question.

I would also suggest the insertion of a provision empowering Local Governments (i) either to exempt particular classes from the operation of the Bill, or (ii) from time to time to fix the minimum marriageable age in respect of particular classes or communities This power, if exercised in a spirit of liberal discretion, would help to make the change more gradual and

less violent and temper the administration of the new law with due regard to local conditions and the change which in course of time may be expected to come about in the opinions and practices of particular communities.

Under clause 5 of the Bill as it stands, a poor priest who may participate in the marriage ceremony will incur the penalty. This is undesirable; it does not seem right to insist that a priest who is called in to officiate at a marriage—may be, he is a stranger to one or other of the parties or even to both—should at his peril satisfy himself beforehand as to the age of the spouses. The responsibility and liability must be cast only on the parents or guardians.

The Marriages Dissolution Bill is, of course, only an enabling measure. Opinions have differed and will continue to differ as to the expediency of providing legal facilities for divorce; I do not, therefore, propose to say anything on the general aspects of the question But I would request our legislators to deal with the proposed relief on its own merits, in the light of modern experience in other countries and not be misled by Dr. Gour's appeal to the authority of the ancient texts of Hindu Law. Time was when great importance was attached to the possession of male progeny and in view of the social conditions then prevailing, the best that early law could do was to establish the 'reign of law' by bringing within its pale and giving the protection of law to several kinds of unions which were in fact taking place (*cf.* the Rakshasa and Paisacha forms of marriage). That is certainly not the view-point of an age that claims to be civilised nor the purpose of a measure introduced in an era when most of our educated people are under the spell of the latest theories of contraception. Nor is Dr. Gour right in using texts which lay down the qualifications of a would-be spouse as authority for the position that the absence of such qualifications would justify the dissolution of a completed marriage. The reference to Niyoga is also out of place for that was not a practice meant to provide for the material comforts and much less for the sentimental or sensual satisfaction of the woman. She was not even a free agent in the matter. She had to consort with only such person as the elders might choose for her. In the words of an Indian critic, that custom "took it for granted that woman was only a chattel or a 'field' owned by some man. How can a 'property,' though it be living, have

a voice in the matter of its disposal by its owner. There could be no question of feeling". (Hinduism, by Govinda Das, p. 285.) Surely this is not the kind of liberty or solace that Dr. Gour is anxious to secure for the women of to-day.

Going to the provisions of the Bill, I would point out that a clear line of demarcation should be maintained between (i) dissolution of a marriage, and (ii) a declaration of invalidity of a marriage; for the latter will affect the legitimacy of the off-spring. It may not be correct to lay down the same causes as justifying both kinds of relief and the point of time with reference to which the existence of the justifying cause must be determined will also vary in the two cases.

As to the causes specified in clause (2), one cannot help observing that they are largely questions of degree and by no means easy of application in practice. I know from professional experience how difficult it is to formulate a safe workable test as to imbecility and I have read of cases in which eminent medical men have given diametrically opposed opinions as to the alleged impotency of a person. I understand that impotency may sometimes be the consequence of excessive indulgence and I don't know if it is the promoter's idea that late in life a man should be called upon at the instance of his wife to submit to an investigation as to his potency. In the case of leprosy, there are different opinions held as to its curability and we do not know what the further advance of medical science may bring to the relief of this unfortunate class of sufferers. Is it intended that as soon as a person shows signs of the specified kind of leprosy the wife is to have a right to ask for divorce; if not, what is the stage at which the Court is to grant it.

It is scarcely fair to impose on the Court an unpleasant and at the same time ill-defined task. Cases where a Court feels constrained to refuse a dissolution do more harm than good to society as well as to the individuals concerned. I must also say this, that while no one can question the right of every woman to a full share of the pleasures of married life, it ought not to be forgotten that there are higher and nobler incidents of that relationship than mere physical pleasures or material comforts. What is the ideal which society ought to set before any woman who may have the misfortune to find her husband afflicted with a cruel and loathsome disease, to desert him and seek her own

pleasure or to minister to him to the best of her ability and to the last breath of her life—I have no doubt as to what the Hindu ideal is.

The Bill must make clear and adequate provision as to the legal consequences of an invalidation or dissolution under it. The marital tie may be severed but what about guardianship of children, inheritance between mother and children or the obligation of the son to maintain the mother, inheritance between the woman and the other relations of the husband, etc. The provisions in this behalf contained in the Widow Re-marriage Act have given rise to certain difficulties, but the practical working of this Bill may give rise to further questions, for a woman may not necessarily re-marry after a dissolution. What then is to be her position in respect of her sapindaship with the members of her husband's family.

In framing the processual provisions (promised to be added) it may have to be considered whether it is not necessary to prescribe some period of limitation in respect of one of the reliefs dealt with in the Bill, *viz.*, declaration of invalidity of the marriage. If, as I presume, the declaration is to be founded only on causes that existed at the date of the marriage, it is scarcely desirable to allow the question to remain in suspense for an indefinite length of time.

THE HINDU WOMEN'S RIGHTS AMENDMENT ACT.

We publish below the text of a Bill amending some of the rules of the Hindu Law regarding the rights of women. The Bill is said to have been prepared by Mr. D. W. Kathaley, B.A., LL.M., Advocate, Nagpur, and Mr. N. V. Bhonde, B.A., LL.B., Pleader, Poona, Secretaries of the Hindu Law Research and Reform Societies. We are informed that Mr. M. R. Jayakar, Bar.-at-Law, M.L.A., will introduce it in the Legislative Assembly after making suitable modifications therein and in the meanwhile it is desired to invite discussion and suggestions on the points involved.

WHEREAS it is expedient to amend certain provisions of Hindu Law, it is hereby enacted as follows:—

Short title.

1. (1) This Act may be called THE HINDU WOMEN'S RIGHTS AMENDMENT ACT, 192 .

Commencement

(2) It shall come into force at once.

and extent.

(3) It applies to the whole of British India.

Rights of adoptive mother.

2. (*a*) Irrespective of the fact whether the adopted son becomes entitled to the rights and interests of the adoptive father by survivorship, succession or by divesting the estate of the adopting widow, the adopted son shall be entitled to one-fourth share thereof and the remaining three-fourths shall remain vested in the widow (in the adoptive mother).

(*b*) The adoptive mother shall have a widow's estate in the property and on her death it will devolve on her daughter, and, in the absence of the daughter, on the daughter's son, in default of the daughter and the daughter's son, the adopted son shall be entitled to the same.

NOTES ON CLAUSES.

According to the Privy Council decision in *Krishnamurti* v. *Krishnamurti*,[1] an agreement entered into by the adopting widow

1. (1927) L.R. 54 I.A. 248: I.L.R. 50 Mad. 508: 53 M.L.J. 57 (P.C.).

UNIVERSITY OF CALCUTTA DEPT. LAW

with the father of the boy to be adopted by which she prevents her estate from being divested in whole or in part is invalid. In many cases where a person is adopted as a son, he scarcely remains grateful to his parents and disputes often arise between the adoptive mother and the adopted son and the former does not possess even sufficient resources to bring a suit for maintenance and is required to sue as a pauper. It may be noticed that in the above case if the adoptive mother would have been a mother of two sons and there would have been a partition of the ancestral estate between them, she would have been entitled to a one-third share in accordance with the text of Yajnavalkya, II. 123 (पितुरूर्ध्वं विभजतां माताप्यंशं समं हरेत्): "Where the sons divide the ancestral property after the death of their father, their mother is entitled to an equal share." In other words, she would have been entitled to the share to which a son is entitled. Now the rights of the adopted son in competition with the rights of the natural son are variously stated to be one-third, one-fourth, one-fifth (*see* Mayne's Hindu Law, page 232, para. 168). The clause gives to the adopted son the share to which he would have been entitled in the presence of a natural born son. The fiction of adoption, however meritorious it may be, has unnecessarily aggrandised the status of the adopted son to the prejudice of the adoptive mother. There need be no fear that, on account of the above provision, the adopting mother would not be able to find boys to adopt.

Testamentary capacity.

3. A member of a joint Hindu family shall be entitled to execute a will of his share or a portion thereof.

NOTES ON CLAUSES.

At the law stands at present a coparcener cannot execute a will in respect of his share or a portion thereof in the joint property in favour of his widow, daughter, sister or any other female or male relation. A will executed by him is invalid. If one minute before the execution of such a will, he makes an unequivocal declaration of his intention to separate as was the case in *Girjabai* v. *Sadashiv*,[2] then such a will becomes valid. It is not desirable that such a declaration should be a condition precedent to the validity of the will. The will itself is a sufficient unambiguous declaration of his intention to treat himself as a person entitled to dispose of the property as if he were a tenant-in-common.

Removal of sex disqualification.

4. No female shall be disqualified from inheriting simply by reason of her sex.

2. (1916) L.R. 43 I.A. 151: I.L.R. 43 Cal. 1031: 31 M.L.J. 455 (P.C.).

Acc. No.

C. NOTES ON CLAUSES.

This clause overrules the rule laid down in Taittiriya Samhita to the effect that a woman is weak and is incompetent to inherit (निरिन्द्रिया ह्यदायादाः स्त्रियः).

The exceptions which have been engrafted on the rule from time to time in favour of the widow, daughter, mother, paternal grandmother, sister, paternal aunt, girls born in the family (who according to the Bombay School get an absolute estate), widows of gotraj sapindas, have practically eaten away the rule. But the instances where that rule still operates illustrate the great hardships. As stated in paragraph 557, page 819 of Mayne's Hindu Law latest edition, daughter can only inherit to her own father and the daughter of the brother, the uncle or the nephew is not an heir and so if one of two undivided brothers under Mitakshara Law dies first, leaving a daughter, and afterwards the surviving brother dies childless, the estate will pass to his collateral relations, but not to the daughter of the first brother. In Bombay Presidency a grand-daughter, a brother's daughter, and a sister's daughter are held capable of inheriting on the principle which prevails in Western India that females born in the family are gotraja sapindas but they come in, however, not as daughters but as distant kindred, and hence some time after the agnates in the fourteenth degree are exhausted. As regards widows as stated in paragraph 529, page 765 of Mayne's Hindu Law, no claim as heir can be set up on behalf of the widow of a son or grandson, or daughter's son, or father, or brother, or uncle, or a cousin and the Crown would take by escheat in preference to her. This is undoubtedly the law of Bengal, Benares, Madras and Mysore, though according to the law as prevailing in the Western India their position is slightly better as they become entitled to succeed after the "compact series of heirs" ending with the brother's son. This is very little consolation in many cases, for example, if a father and his son are attacked by plague and the father dies first and the son dies afterwards, the son's widow inherits the property, but if the son dies first and the father dies afterwards, the son's widow is not entitled to succeed at all according to the law prevailing throughout the whole of India excepting Bombay, where she would succeed only if her father-in-law's brother or his son (including grandson and great-grandson) are not alive. A near relation, *e.g.*, mother's sister is not an heir throughout India on account of this rule.

The reason for excluding females from succession is to be found in a text of Taittiriya Samhita which is usually translated as follows:—

"Women are weak and therefore they are incompetent to inherit" (निरिन्द्रिया ह्यदायादाः स्त्रियः).

According to the view of Brahmaranya in the Madhaviya commentaries on Parashara-smriti, "Adayada" means incompetent to drink soma juice and has got nothing to do with the incompetency to inherit. See *Lallubhai Bapubhai* v. *Mankuvarbai*.[3] It may be further noticed that a lady is the widow of one man, mother of another, sister of a third, niece of a fourth and a widow of a gotraja sapinda so far as related to different persons. Keeping aside the cases arising in Bombay Presidency, the law as regards the succession is that she should be excluded from succession in the capacity of a sister or a niece or a cousin or the widow of a gotraja sapinda because she is weak and incompetent to inherit, to use the language of Taittiriya Samhita (तैत्तिरीयसंहिता). But she inherits in the capacity of a widow, daughter, mother and grandmother because though she is weak, she is competent to inherit. To insist in these days upon retaining the disability to inherit is not only anomalous but perpetuating a grave injustice. It may be noticed that in England there is already a Sex Disabilities Removal Act and that in India the disqualification to vote on account of sex has been removed by various local Councils. The disqualification to inherit should also disappear.

Shares of females.

5. The female entitled to inherit shall rank as if she were a male, but, unless otherwise provided for, the share of a female shall be half of that of a male standing in the same degree of relationship.

Illustrations.

1. Son and daughter shall together inherit the property of their father but the share of the son shall be double the share of the daughter.

2. Sister and brother shall inherit together the property of their brother but the share of the brother shall be double the share of the sister.

3. Maternal aunt and maternal uncle will inherit together the property of the nephew, but the share of the maternal uncle shall be double the share of the maternal aunt.

NOTES ON CLAUSES.

This provision is necessary, as the disqualification to inherit, which attaches to the female sex as such, is removed.

Females entitled to widow's estate.

6. Females inheriting by virtue of the provisions of this Act shall be entitled to a widow's estate in the property.

NOTES ON CLAUSES.

The bills framed by Sir Bhashyam Aiyangar and Seshagiri Aiyar provided that the females inheriting under the Acts shall be

3. (1876) I.L.R. 2 Bom. 388 (428) (F.B.).

entitled to a widow's estate in the property. The provision for allowing the females to inherit the property is one thing and to give them absolute rights in the property is another. In Schopenhaur's Studies in Pessimism, it is observed that the rule by which absolute ownership is conferred on female heirs in European countries is of questionable soundness.

Rights of a widow, and a daughter.

7. (*a*) Notwithstanding anything to the contrary in the Mitakshara School of Law, a widow shall be entitled to inherit the rights and interests of her husband, in the absence of a son, irrespective of the fact whether he was a member of a joint Hindu family or not.

(*b*) In default of the widow, the daughter shall succeed in similar circumstances.

NOTES ON CLAUSES.

In suggesting the various reforms to be made in Hindu Law the principle followed in this bill is to extend a reform already made in one province to the other provinces. According to the Dayabhag School of Law a widow inherits the right and interests of a sonless husband and in default of the widow, the daughter succeeds in similar circumstances. The reform has been made by Jeemutvahan who lived in 1092 A.D. (See *Rajani Nath Das* v. *Nitai Chandra Dey*.[4]) This reform which has been made in Bengal by the Pandits more than eight hundred years ago is now extended to the other provinces. If one looks to the reasoning of the author of Dayabhag, it is indeed plausible. He too relies on the text of Yajnavalkya, II. 135, 136, referred to by the writers of the Mitakshara School:

पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा ।
तत्सुता गोत्रजो बन्धुश्शिष्यः सब्रह्मचारिणः ॥
येषामभावे पूर्वस्य धनभागुत्तरोत्तरः ।
स्वर्यातस्य ह्यपुत्रस्य सर्ववर्णेष्वयं विधिः ॥

but points out that that text as well as other texts nowhere state that the deceased should be a separated member from the other members of the family. See the point about the widow's right of succession discussed at elaborate length by the author of Dayabhag (दायभाग) in Chapter XI, section 1, which for the sake of convenience would be found in pages 68 to 81 of Setlur's translations of Hindu Law Books, Part II, found in the same book.

4. (1920) I.L.R. 48 Cal. 643 (687, 736) (F.B.).

The reasons applicable to the case of the succession of a widow are applicable also to the case of a daughter and she should be entitled to succeed irrespective of the fact whether her father was joint or separated. According to Brihaspati, the daughter is the heir in default of the widow, daughter is born from the parents just like a son; how can any one else take the property while she is alive.

भर्तुर्धनहरी पत्नी तां विना दुहिता स्मृता ।
अङ्गादङ्गात्सम्भवति पुत्रवद्दुहिता नृणाम् ।
तस्मात्पितृधनं त्वन्यः कथं गृह्णीत मानवः ॥

The text was one of several upon which the right of the daughter to inherit was founded. The principle recognised in this text has been given a more extended application. The succession of a daughter to the estate of her father whether he was joint or separated from the other members of the family is allowed in Bengal like the succession of the widow since more than eight hundred years ago by the author of Dayabhag as pointed out above. This reform is now extended to other provinces.

According to the Privy Council decision in *Girjabai* v. *Sadashiv*,[2] if a coparcener makes an unequivocal declaration of his intention to separate, his share passes to his widow and in her default, to his daughter. The effect of this clause is to allow the interest to be inherited by the widow or the daughter, even though there may be no such declaration.

Widow's share.

8. In the case of property passing by inheritance or survivorship to a son, the widow shall get a share equal to that of a son.

NOTES ON CLAUSES.

In partition of ancestral property amongst the sons, their mother gets a share equal to that of a son in accordance with the text of Yajnavalkya, II. 123 (पितुरूर्ध्वं विभजतां माताप्यंशं समं हरेत्): "In the case of sons dividing after the death of the father their mother is entitled to an equal share." This principle is extended to the case of inheritance also.

Removal of restrictions on the right of daughters to inherit.

9. (*a*) Notwithstanding anything to the contrary, an unmarried daughter and a married daughter shall succeed equally to the estate of their father.

2. (1916) L.R. 43 I.A. 151: I.L.R. 43 Cal. 1031: 31 M.L.J. 455 (P.C.).

(*b*) Notwithstanding anything to the contrary in the Mitakshara School of Law, a rich daughter and a poor daughter shall succeed equally to the estate of their father.

(*c*) Notwithstanding anything to the contrary in the Dayabhag School of Law, a widowed daughter destitute of male issue, or a barren daughter whose husband may be alive, or a daughter who is the mother of daughters only, shall be entitled to inherit the property.

(*d*) A custom excluding daughters from succession shall not be enforced by the Courts.

NOTES ON CLAUSES.

(*a*) An unmarried daughter excludes the married daughter because the former is still in the gotra of her father while the latter has passed out of it. This can scarcely be regarded as a justifiable ground for excluding the married daughters, especially in those cases where the estate is a big one.

(*b*) In no case the heirship is made dependent on the fact of the heir being poor. A rich sister or brother inherits the property along with a poor sister or brother.

(*c*) According to the Bengal School "In no circumstances can the daughters who are either barren, or widows destitute of male issue, or the mother of daughters only, inherit the property." *See* Mayne's Hindu Law, para. 558, p. 820. According to a decision of the Calcutta High Court, a married daughter governed by the Dayabhag School of Law, who has got a son, excludes a childless widowed daughter of child bearing age, though there is a custom of widow re-marriage in the caste. See *Binodini* v. *Susthee.*[5] As against this may be contrasted the view adopted in a recent English case where it was laid down that it was not permissible in determining rights at law to enquire into the capacity of women to bear children, and that the Court ought not to make the presumption that a woman is past child bearing, though she may be 65 years old. See *In re Deloitte: Griffiths* v. *Deloitte.*[6]

These daughters are excluded in Bengal from succession on the ground that as they have no son, the propositus does not get a *pinda* from him. They are thus disinherited for no fault of theirs and if a right of inheritance is conferred upon them by the legislature, no calamity will befall the orthodox Bengal, especially in view of the

5. (1920) I.L.R. 48 Cal. 300.
6. (1926) 1 Ch. 56.

fact that such daughters are allowed to succeed to the property of their father in all other provinces.

(*d*) This clause declares as invalid the custom prevailing in certain places by which daughters are excluded from succession to the estate of their father. *See* Mayne's Hindu Law, para. 557, page 818 note, *N. Bajrangi Singh* v. *Manokarnika Bakhsh Singh*[7] and *Parbati* v. *Chandrapal.*[8] The rule that clear proof of usage will outweigh the written text of the Law (शास्त्राद्रूढिर्बलीयसी) has been criticised by a Mimamsa writer, Khanda Dev in his Bhatta-deepika, as follows:—

यदपि शास्त्राद्रूढिर्बलीयसीति वचनं पुरस्क्रियेत न तदपि समञ्जसतामवगाहते । यदा व्रीह्यपेक्षया तृणवृद्धिर्विशिष्यते तदा कृषीवलस्तां निरस्य धान्यवृद्धावेव प्रयतते ।

As an agriculturist in order to keep his crops in good condition removes the weeds and makes efforts only for the improvement of the crops, similarly a lawyer must find out what are the unnecessary excrescences which have come into existence since the time the textual law was written, and remove them.

Widows of sapindas entitled to inherit.

10. Notwithstanding anything to the contrary in the Mitakshara or the Dayabhag School of Law the widow of Gotraj Sapindas and Bhinna Gotra Sapindas will be entitled to inherit, and shall occupy the same place in the list of heirs, which their sons, if living, would have occupied, subject to the right of any person whose place is specially fixed under the Hindu Law as modified by this Act.

NOTES ON CLAUSES.

According to the Bombay School, the widow of Gotraj Sapindas stand in the same place that their husband if living would respectively have occupied, subject to the right of any person whose place is specially fixed.—*See* Mayne's Hindu Law, para. 585, page 860 (*e*). This rule is extended to cases governed by the other schools. Further the rule which entitled the widows of Gotraj Sapindas to inherit has been also extended to the widows of Bhinna Gotra Sapindas. Under the present law maternal uncle's son is an heir but the wife of the maternal uncle is not entitled to inherit. The provision removes this anomaly. The position assigned to them is not that which their husbands, if living, would have occupied, as, *i.e.*, this would exclude the maternal uncle's son when the maternal uncle's wife is alive.

---

7. (1907) L.R. 35 I.A. 1: I.L.R. 30 A. 1: 17 M.L.J. 605 (P.C.).
8. (1909) L.R. 36 I.A. 125: I.L.R. 31 A. 457: 19 M.L.J. 605 (P.C.).

Right to demand a partition.

11. Notwithstanding anything to the contrary in the Mitakshara or the Dayabhag School of Law, a female entitled to a share shall be entitled to get it separated by partition.

NOTES ON CLAUSES.

When the partition takes place after the death of the father, the mother and the grandmother are each entitled to a share equal to that of the sons, and the unmarried daughters each to the fourth of a share. If the sons chose to remain undivided, they have a right to do so. The women of the family can never compel a division, and are entitled to no more than maintenance. *See* Mayne's Hindu Law, para. 477, pages 689, 690 (*s*) (*t*). The present clause enables them to get their right enforced like any other male entitled to a share. As the share obtained on partition does not become Stridhan (*see* Mayne's Hindu Law, para. 658, page 969 (*m*-1), the property will go back to the stock from which it came.

Priority in the case of certain female heirs.

12. A step-mother, a predeceased son's widow, a predeceased son's daughter, shall be entitled to succeed equally with a son, or in his default with the widow, or in her default with the daughter, or in the default of all these persons, with the daughter's son.

A daughter's daughter shall be entitled to rank as a daughter's son and a sister shall be entitled to rank as a brother for the purpose of inheritance.

NOTES ON CLAUSES.

The heirs mentioned in the above clause deserve a priority which is not allowed to them by law even where they are recognised as heirs.

Agnates not preferred to cognates.

13. An agnatic relation shall not be preferred to a cognatic relation merely on the ground of his relationship being agnatic but a person who is a nearer sapinda shall exclude a sapinda who is more remote. Where the persons claiming the inheritance are equally remote from the propositus, they will succeed together whether they are agnates or cognates.

Illustration.

1. A brother's son and a sister's son will succeed in equal shares.

NOTES ON CLAUSES.

Effect is given to the principle underlying the text of Manu, IX. 123: "To the nearest sapinda the inheritance next belongs" (अनन्तर: सपिण्डाध: तस्य तस्य धनं भवेत्) Irrespective of the

C

fact whether the sapinda is a sagotra sapinda or bhinna gotra sapinda. This principle is adopted by Dayabhag School of Law and is now extended to the other schools.

SUMMARY OF ENGLISH CASES.

ANDERSON-BERRY, *In re,* (1928) 1 Ch. 290: 97 L.J.Ch. 111.

Administration—Administrator with sureties of estate of intestate—Administrator threatening to distribute assets without providing for possible liability—Right of surety to bring quia timet *action.*

Where the administrator of the estate of an intestate person threatened to distribute the assets without providing for a possible liability which might fall on the estate,

Held, that the sureties of the administration bond were entitled to bring an action *quia timet* against him to restrain him from distributing the estate.

DEBTOR, *In re,* 97 L.J.Ch. 120.

Bankruptcy—Judgment for £500 and costs—Petition for receiving order—Dismissal of petition on terms—Terms amounting to extortion—Default by debtor in acting up to the terms—Second bankruptcy petition—Bankruptcy Act (1914), *S.* 5 (3).

A debtor incurred a debt of £500 in connection with an underwriting agreement with a company. The creditor obtained a judgment for £500 and costs against the debtor, served a bankruptcy notice and then filed a petition for a receiving order. The petition was dismissed upon terms one of which was that the debtor should pay in instalments the costs between solicitor and client of the proceedings taken against him and against the company. The debtor paid one instalment in pursuance of this but made default afterwards. The creditor filed a fresh bankruptcy petition upon whom a receiving order was passed.

Held, that the debtor was not, in law, liable to pay the costs of the action, as between solicitor and client, brought by the creditor against the company and the terms to that effect amounted to an extortion from the debtor, and therefore the receiving order must be discharged.

A creditor cannot be allowed to utilise bankruptcy proceedings for the purpose of extorting, or attempting to extort, money from the debtor for which the debtor is in no sense liable.

GLANVILLE *v.* SUTTON, (1928) 1 K.B. 571.

Negligence—Horse biting the plaintiff—The defendant's knowledge of the propensity of the horse to bite other horses—Proof of 'scienter'—Liability of the horse-owner.

The mere fact that the defendant had knowledge of the propensity of his horse to bite other horses would not be sufficient evidence of knowledge of a propensity to bite mankind.

COMMISSIONERS OF INLAND REVENUE *v.* HAWLEY, (1928) 1 K.B. 578: 97 L.J.K.B. 191.

Income-tax—Specific legacy of shares in a company—Dividend accruing due between death and executor's assent—Liability to income-tax.

A specific legacy of a number of shares in a company was not assented to by the executors until some two years after the death. Dividends had accrued in the meantime and, although payable to the executors, were not actually paid because the company claimed a debt due from the testator but when the debt was paid off and the executors assented, the equivalent of the dividends was allowed to the legatee.

Held, that the dividends should be treated as income of the years in which they accrued due, and not of the year in which assent was given to the legacy and their equivalent was paid.

ARNOLD AND WEAVER *v.* AMARI, (1928) 1 K.B. 584: 97 L.J.K.B. 238.

Husband and wife—Divorce proceedings—Wife engaging solicitor—Non-appearance of the wife on the date of hearing—Decree against wife—Solicitor's error in not obtaining security for her costs—'Necessaries'—Agency of necessity—Whether husband liable to wife's solicitor for costs.

In divorce proceedings instituted by a husband against his wife on the ground of her adultery the wife engaged a solicitor to prove her innocence. On the date of hearing, the wife did not appear and a decree was obtained by the husband. The wife's counsel applied for costs, but as no security for costs had been obtained no costs were granted. In an action brought by the wife's solicitor to recover the costs from the husband,

Held, that the solicitor could not recover the costs from the husband, as in these circumstances the wife had no authority to bind her husband.

HOWELLS *v.* GREAT WESTERN RAILWAY, 97 L.J.K.B. 183.

Workman's compensation—Accident arising in the course of employment—Dock labourer working in docks—Provided route over a metalled road—Shorter cut involving the crossing of a number of railway lines—Shorter route accustomed and permitted—Labourer proceeding on shorter route killed by light engine.

There was a provided route over a metalled road to reach the shed in a dockyard. As this was a longway round, workmen in the dockyard generally used to take a shorter cut which involved the crossing of a number of railway lines on the level, to the knowledge and implied permission of the railway company's officials. A dock labourer while using this shorter cut to load cargo into a steamer was knocked down and killed by a light engine. The action was brought for compensation against the railway company.

Held, that the accident arose out of and in the course of the employment as the workman was in the employer's premises proceeding to work over a route which, though it was not a provided route, was still one which was accustomed to be used as a route by the workmen and also permitted impliedly by the company.

ATTORNEY-GENERAL *v.* METROPOLITAN WATER BOARD, 97 L.J.K.B. 214.

Income-tax Act (1918)—*All Schedules Rules* 19 *to* 21—*"Brought into charge"—Meaning of.*

A Water Company showed a loss for a particular year and, consequently, was not assessed to income-tax the next year, as the company was in law liable to be assessed only on the profits of the previous year. But that next year showed a profit of £2,481,085 out of which the company paid £1,668,351 interest payable on water stock and debentures, deducting and retaining the income-tax thereon.

Held, that the company had no right to retain, as against the Crown, the amount retained by it, as it could not be contended that the interest had been paid out of profits or gains "brought into charge to tax" within Rule 19 of the All Schedules Rules of the Income-tax Act, and that, therefore, the Crown was entitled to the amount of tax deducted and retained by the company.

COLESHILL *v.* MANCHESTER CORPORATION, 97 L.J.K.B. 229.

Negligence—Road not being a highway—Trench on the road—Fall into trench—Injuries—Claim for damages.

A trench was made by the Manchester Corporation on an uncompleted road in connection with the development of a building estate. The trench was cut across the roadway to lay an electric main to an electric standard for lighting. No lights were yet installed in the roadway and the trench itself was at night unlighted and unfenced. The land on the south side belonged to Manchester Corporation though not yet built on. It was divided from the road by a two-barred fence. South of this land was a golf-links which had public footpaths across it and was apparently a favourite walk of the neighbours. At some point of the fence one of the top bars had been broken so that by stepping over the broken bar people could get into the field and people walking through this gap towards the golf-links had made a sort of rough footpath. People took this short cut for the golf-links particularly on Sundays and the Corporation even if they were aware of the practice did nothing to stop it. The plaintiff seeing some people taking the short cut, walked down the road after sunset with a companion. He came back from the golf-links along the uncompleted road about 9 o'clock when it was getting dark and fell into the trench and sustained injuries. The plaintiff instituted an action for damages against the Corporation for injuries sustained.

Held, that the plaintiff was a bare licensee and there being no evidence on which a jury could reasonably find that the defendant has exposed the plaintiff to a danger not obvious or not reasonably to be expected in the circumstances the action must fail.

THE JANERA, 97 L.J.P. 58.

Practice—Stay of action—Plaintiff in the action happening to be defendant in an action elsewhere in respect of the same collision.

An action properly brought in England ought not to be stayed solely because the plaintiffs in the action are defendants in proceedings in Egypt relating to the same collision.

JOTTINGS AND CUTTINGS.

Vexatious Litigation under Workmen's Compensation Acts:—It is but seldom that the High Court is moved by the Attorney-General to make an order under section 51 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, a section which reproduces a similar provision in the Vexatious Actions Act of 1896; but the need of such a provision was amply exemplified in the case of *Robert Loftus* (*Times,* 1st instant), in which the Divisional Court made an order directing that no legal proceedings might be instituted in any Court by the respondent without the leave of the High Court or a Judge thereof. There are in every generation a small number of persons whose unreasonable persistence in litigation annoys the Judges and involves a number of innocent people in vexatious waste of time and money; but in general means are found to put a period to their activities without invoking the aid of section 51. In the case of Loftus, the respondent had, after obtaining compensation under the Workmen's Compensation Acts, applied for an increase, but an order was made terminating the compensation on the ground that he had completely recovered from the accident. From 1919 onwards, using the means provided by the Acts, Loftus had made ten successive applications to the County Courts for a lump sum award, his claim increasing from 1,400*l.* in the first place to 304,000*l.* in the latest application in December last. In each case the application had been refused with costs, but none of the costs awarded had in fact been paid. It must be admitted that exceptional facilities are afforded to a certain type of litigant by the Workmen's Compensation Acts "habitually persistently and without reasonable ground" to institute vexatious legal proceedings.—*L. J.,* 1928, p. 371.

Not Quite Forgotten:—It must not be supposed that the judges of fifty years ago, mentioned in this column last week as having passed out of modern memory, are by all forgotten. One, and he by no means old, on seeing the list, said: "What, Honyman? a peculiar fellow; ugly, of large dimensions, married a barmaid; died of Bright's disease; during a game of whist was told by his partner, a much more famous Judge: 'You're baronet, hold up your bloody hand!' Grove? the inventer of Grove's Battery, grandfather of our own Eustace Hill, K.C.: hated draughts; once when on circuit the caretaker of his lodg-

ings raised a commotion about the disappearance of the sheets from his Lordship's bed, and was finally informed by the Judge himself that he had stuffed the sheets up the chimney to stop the draught. Charley Hall? son of Hall, V. C., son of the Prince of Wales; yachtsman, member of the R.Y.C., who, when a silk, turned up in Court in full Cowes kit, afforded his opponent an opportunity of saying that Mr. Grove suggested Margate to all their minds, and obtained from the Bench the desired adjournment. Sir William Bovill, he of the Tichborne Trial; Chief Justice".—and so forth.

Perhaps, after all, it is only the heedless post-war barristers who have forgotten.—*L. J.*, 1928, p. 385.

Lord Birkenhead on Local Bars:—Lord Birkenhead's contribution to the current number of *Graya* is of great interest to the newly-called barrister who is still contemplating his first step in the direction of the Woolsack. Does London or a local Bar afford him the better opportunities? Lord Birkenhead himself found nothing amiss with Liverpool, where he had some local influence and where he prospered so exceedingly that a Judge on circuit, observing the vast proportions of the new town hall, ironically surmised that they were F. E.'s new chambers. In his day there were at Liverpool a collection of juniors in no way inferior to London's best, including Horridge, J., Greer, L.J., Swift, J., Sir Leslie Scott, K. C., Mr. Collingwood Hope, K. C., and fourteen men who were destined to become County Court Judges or Metropolitan Magistrates. At the neighbouring Manchester Bar were a crowd of equally brilliant performers, including the present Lord Chief Justice of England.

Commence, therefore, at one of the several local Bars if you have local influence; but remember that you will have two fences before you; for in the fullness of time you must move to London or decay. To the young man of capacity and industry, but with no influence or friends in a provincial centre, Lord Birkenhead suggests that the best course is to insinuate himself into busy chambers in the Metropolis. This is the conclusion to which, unaided by such high authority, one would fain arrive.—*L. J.*, 1928, p. 385.

The Proper Study of a Lawyer:—In 1828 there were, according to the scholarly computations of Mr. Park, in a moderate law library 2,500,000 points of law. It makes one

shudder to contemplate the increase of the ensuing century; and one turns with infinite relief to the cheerful modern authorities who assure the lazy and the fearful that all law can be reduced to about seven principles, wherefrom the intelligent can arrive at any required point by the application of logic and common sense.

And the complete lawyer must not confine his study to the three million points. He must not be ignorant, said Dr. Cowell, "of either beasts, fowls, creeping things, nor of the trees, from the cedar of Lebanon to the hyssop that springeth out of the wall." And the Mr. Chitty of the period round about 1850 advised the study of anatomy, physiology, pathology, surgery, chemistry, medical jurisprudence, police and mankind. It is no wonder that the modern practitioner has been forced to specialise and to confine his attention, *e.g.*, to Golf, Conveyancing and Mankind.—*L. J.*, 1928, p. 385.

Religion and the State:—The suggestion made by Cardinal Bourne in a sermon at Cambridge last Sunday that the constitutional requirement under which the Sovereign must be a "faithful Protestant" may some day be called in question is, of course, not practical politics, at any rate so long as the Church of England continues to be established and the Sovereign is the lay head of the Church. And with the Revised Prayer Book on the point of coming again before Parliament the present does not seem a very opportune time for suggesting such a change in the settled policy of the country. But it is interesting to recall that the much less important suggestion for a relaxation of the rule as to the Lord Chancellor when made some thirty years ago found little favour. The occasion was the possibility that Lord Russell of Killowen might be barred from the Chancellorship, and in 1895 Mr. Gladstone wrote to him: "I have never got over my wrath at the failure of our effort to repeal the unjust and now ridiculous law which kept the highest office in your profession out of your reach." Since that time the proposal has, we believe, never been revived, but of course it stands on quite a different footing from the faith of the Sovereign, and the opening of the Chancellorship to Roman Catholics probably only awaits the next occasion for it. Protestant Non-conformists appear to be already eligible.—*L. J.*, 1928, p. 392.

The Law of Trusts:—We notice elsewhere the new "Lewin," and it is interesting to recall the attempt that was

made in 1908 to codify the Law of Trusts. It was an influential attempt. The Trusts Bill was introduced by Mr. Athelstan Rendall and it was backed by, among others, "Mr. Cave, Mr. Micklem, Mr. Stewart Smith, Mr. Buckmaster, Mr. Strange, and Mr. Hills." It was based on the pattern of the Bills of Exchange Act, and other familiar instances of codification, and professed to be "merely a statement in statutory form of the general rules, now only to be extracted from the reported decisions of the Courts and the various statutory enactments by which they have been supplemented or modified." It did not touch the Public Trustee Act, 1906. We believe it made no progress, and, if we remember rightly, it was not viewed with favour by the judges of the Chancery Division. Some thirteen years before—in 1895—Lord Lindley (then Lord Justice) gave interesting evidence on Trusts Administration before the Select Committee whose report resulted in the establishment of the Public Trustee. Lord Lindley was a supporter of elasticity in trusts. "I think," he said, "that the power to commit judicious breaches of trust with the sanction of the Court would be an immense improvement in the Law of Trusts." We have that now in the Trustee Act, 1925. And Lord Lindley prided himself on his share in the case of *Speight* v. *Gaunt*, upheld in the House of Lords, which established the prudence of the reasonable business man as the test for a trustee. Some day, probably, the attempt to codify the Law of Trusts will succeed, but it is a branch of the law which it is eminently desirable to leave open for judicial improvement, if possible; though with Equity settled, as it now is, on as strict lines as Law, little such possibility seems to remain.—*L. J.*, 1928, p. 392.

A Course of Law:—Those who would abstract the maximum of pleasure and profit from the Law Books might as well do it thoroughly and study this branch of learning systematically. The Law is a heady wine (when it is not caviare), and if not consumed methodically may lead to all manner of excesses. Coke (Inst. 1, c. 1, S. 85) thinks the following system is sound:—

Sex horas somno, totidem des legibus aequis.
Quatuor orabis, des epulisque duas,
Quod superest ultro sacris largire Camaenis.

Sir William Jones it was who, making entirely free of this quotation, and leaving an implied and undivided hour to religion, says:—

> Six hours to law, to soothing slumber seven,
> Ten to the world allot, and all to heaven.

My own advice is, partly adopting that of Lord Birkenhead: insinuate yourself into busy chambers in London and play the devil with whatever work you can find both in Chambers and in Court. Dip into the Reports as and when the need arises; convey by unobjectionable means the impression that you are responsible for the busy junior's successes, while he himself, because of his failure to consult you, is to blame for the failures. Despise not the day of small solicitors, remembering that they are stepping-stones. Work, sleep, religion, and the world will then fall naturally into place.—*L. J.*, 1928, p. 406.

Charles, J. and the Crime Passionel:—Although in this country we do not take the Continental view of the *crime passionel,* our law recognises one or two situations in which a man, not in self-defence and without legal document, may kill and do no murder.

Our mode of dealing with crimes committed in circumstances which in France have a recognised name and classification are less obtrusive, but equally effective. Take the case of *Rex* v. *H. J. Edwards,* tried for the manslaughter of Theodore Potter before Charles, J., at Manchester Assizes. The prisoner, while his wife was walking with another woman, saw Potter approach them, pull them apart, and attempt to put an arm round each of them. The prisoner, coming up, struck Potter a blow in the face, not, he said, a severe one, and knocked him down. Potter subsequently died in hospital from a fractured skull. Acting on the instructions of Charles, J., the Jury found Edwards guilty of manslaughter under great provocation; and the judge, thereupon, sentenced him to three days' imprisonment. As he had already been in prison for more than that period awaiting trial, he was immediately discharged. And none can deny that in so doing Charles, J., did justly.—*L. J.*, 1928, p. 407.

The American Peace Proposals:—Sir Austen Chamberlain's statement in the House of Commons on Friday of last week

justifies the forecast we made a fortnight ago. The British Government, he says, warmly welcome the initiative taken by the United States and are hopeful that it will make a real contribution to the peace of the world. Perhaps of even greater importance is the unanimous acceptance by the House of Lords on Tuesday of the Marquis of Reading's motion, that prompt and favourable consideration should be given to the proposals, and "that His Majesty's Government should declare their acceptance of the principles embodied in the proposed treaties." We need not discuss the delay in making a formal reply to the United States. It is significant that the House of Lords declined to accede to Lord Cushendun's suggestion that the motion should be withdrawn. The result of Lord Reading's action is that the country stands committed by the resolution of its most weighty authority in a matter of this kind to the renunciation of war. Whether Sir Austen Chamberlain was right in saying that this country never has treated war as an instrument of policy we gravely doubt, but that is a matter for the historian. Perhaps Prof. Seeley's thesis in "The Expansion of England" was true and all her possessions fell to Great Britain quite undesignedly as ripe fruit falls to the ground. The renunciation of war, as Lord Cecil pointed out, will lead to a revision of International Law so far as it is based on the right of a nation to make war, and it will necessitate the extension of the existing means for the peaceful settlement of international disputes.—*L. J.*, 1928, p. 411.

Testamentary Disposition:—Lord Astor's attempt to introduce into this country the law of *legitim* which prevails generally throughout the civilised world did not meet with the success which it deserved, and it is unfortunate that the Lord Chancellor gave it such an unsympathetic reception that the motion was withdrawn. There is no doubt that the present English system of unqualified freedom of testamentary disposition enables a man to defeat the obligations he enters into by marriage and results in cases of great hardship to wives and children. Whether they are few or many does not matter. The law exists for the redress of injustice, and cases of injustice are always in the minority. Society is based on the free recognition of moral obligations. In the relatively few cases where this fails—and where the intervention of the law is appropriate—moral are turned into legal obligations. That should be so with the

family and with testamentary disposition. If Lord Hailsham is doubtful whether the thing can be done and Lord Merrivale thinks it is revolutionary, we can make a suggestion which should appeal at any rate to the latter, for is it not the part of a good judge to amplify his jurisdiction? Let it be enacted, then, that a testator who has not made for his wife and children such provision as under the circumstances is proper be deemed not to have been of sound mind and memory. In the possible event of this sensible proposal being considered impracticable, then this country will have sooner or later to adopt in this respect the policy which the civilised world generally has taken from the Roman Law, just as it has tardily acceded to the rule of legitimation by subsequent marriage.—*L. J.*, 1928, p. 412.

Matrimonial Law : *Kissing and Kicking*:—There have been occasions when an *obiter dictum* has misled simple folk in a matter of law. "The prisoner," said Grantham, J., on one occasion, "was justified in believing that his wife had formed an unholy affection for another man. If he had contented himself with boxing her ears it would only have served her right, for her conduct was enough to drive any man out of his mind." The result of this breezy and misleading observation was said to be a great increase in the "ear-boxing" of wives; and although there was more to be said for the views of Grantham, J., than some of his critics supposed, the right of chastisement had, in fact, died long before, and the "quaint and absurd dicta" on which they were based were, in the words of Lord Halsbury, "incapable of being cited as authorities in this or any civilised country."

Now, as plainly appears from the judicial views in *Meekings v. Meekings* (*Times*, May 4), the time-honoured right of kissing one's wife is hedged about with limitations. Undue violence must not be used; nor may a man lawfully assume that at all times and in all places his wife is willing to be kissed.—*L. J.*, 1928, p. 425.

Dress to be worn by Abvocates in Madras.—The High Court is pleased to direct that, in future, all advocates shall wear black coats, stiff collars and bands and the black gowns prescribed by the University of Madras for Bachelor of Laws when appearing before the Court.—*R.O.C.* 3336-B. 2|28.

Madras High Court Rules, Appellate Side.

Appeal against decisions by single Judge.—The High Court hereby makes the following amendment to the Appellate Side Rules. It shall come into force immediately.

R. 195.—When an appeal against an appellate decree or order has been heard and disposed of by a single Judge, any application for a certificate that the case is a fit one for further appeal to the High Court under clause 15 of the Letters Patent of the High Court shall be made orally and immediately after the judgment has been delivered.

BOOK REVIEWS.

THE LAW RELATING TO MINORS, by Sir Ernest Trevelyan, 6th edition, revised by T. Chatterjee, B.A., Bar.-at-Law. Published by Messrs. Thacker, Spink & Co., Calcutta. Price Rs. 17-8-0.

The late Sir Ernest Trevelyan's Law relating to Minors was looked upon as the authoritative treatise on the Indian Law on the subject. It was a matter of some regret that the last edition was becoming out of date on account of various new enactments and decisions. We may perhaps notice one remarkable feature of Trevelyan's works, *viz.*, that the statements of law made by the author could be taken from the treatises themselves without any verification from the decisions or other authorities noticed by him. Another feature is the lucidity of his statements of law which always tends to clear the legal notions of the reader without in any way confusing him. These characteristics have gone largely to make his work on minors authoritative on the subject. We have no doubt that the present edition which has been brought thoroughly up-to-date by noticing the later statutes and decisions, as popular as the previous editions of the work brought out by the author himself.

HENDERSON ON THE LAW OF SUCCESSION, 5th edition, by Alexander Kinney. Published by Messrs. Thacker, Spink & Co., 1928. Price Rs. 32.

The enactment of the Indian Succession Act (XXXIX of 1925) consolidating the provisions relating to testamentary and

intestate succession scattered in various statutes has necessitated the bringing out of this new edition by Mr. Alexander Kinney, the Administrator-General and Official Trustee of Bengal, who is most competent to write on the subject and who was responsible for the two prior editions. Henderson's Law of Succession has been considered as a leading treatise on that branch of the law and the present edition is naturally more comprehensive than the previous one, as the present Act incorporates a number of other enactments than the Indian Succession Act of 1865. Having regard to the fact that all the provisions of the Act are not applicable to all persons in British India, the author has added a note to each section indicating the class of persons to whom each section applies. The notes under each section have been enlarged considerably and references have been made to the decisions since 1922. The author has also given in the addenda the provisions of the two Acts of 1926 amending the main Act of 1925. There is also a comparative table at the commencement of the work giving the sections of the present Act and those of the previous enactments on the subject. This edition with its enhanced usefulness will, we are sure, be widely appreciated.

PREVENTION OF OFFENCES, by Suresh Chandra Mukerji, Vakil, High Court, Calcutta. Art Press, Calcutta. Price Rs. 12.

This is a commentary mainly of the preventive sections of the Criminal Procedure Code arranged in a logical order. Though the work is not a mere digest of cases, the author has kept in view the needs of a busy practitioner and made it useful to him as a book of ready reference by noticing the decisions. Appendix I to the work gives in *extenso* the other important statutes relating to the prevention of offences. A feature of the work that we should draw attention to, is that the author has canvassed the correctness of the decisions in cases where he considers them open to doubt. Special chapters have been devoted to the general statements of the law without the citation of rulings to make the book useful for students. The author has thus tried his best to make the work helpful to the bench, the bar and the student alike.

INDIAN EVIDENCE ACT, by Tarapada Banerji, Vakil, High Court, Calcutta, 6th edition, by Mr. A. C. Ghose, M.A., B.L.,

Vakil, High Court, Calcutta. Published by M. C. Sarkar & Sons, Calcutta. Price Rs. 9.

This is the sixth edition of a popular commentary on the Indian Evidence Act edited by Mr. Ghose who is well known as the author of many legal publications. The learned editor has justly observed that a correct appreciation of the provisions of the Indian Evidence Act is indispensable for the efficient conduct of trials and a lawyer will not be the worse for perusing frequently the more important sections of the Act. This edition brings up to date the decisions on the Act. We however miss to notice any reference to the Privy Council decision in *Narasingerji Jyanagerji* v. *Panuganti Parthasaradhi Rayanam Garu,*[1] which may have the effect of throwing some doubt on the prior notions on section 92 of the Evidence Act and the effect of the decision in *Balkishen Das* v. *Legge.*[2] The observations of their Lordships of the Privy Council on the statement of the law by Sir John Wallis, C. J., that the law in this country is different from what it is in England, we venture to think, requires careful consideration.

THE PRESIDENCY SMALL CAUSE COURTS ACT, by Dr. M. Krishnamachariar. Published by Messrs. Butterworth & Co., 1928. Price Rs. 6.

This is a commentary on the Presidency Small Cause Courts Act by Dr. M. Krishnamachariar who is already well known as the author of many works on several branches of law, with a foreword from the pen of Mr. Justice Odgers who was, for some years, the Chief Judge of Madras Court of Small Causes. The difficulties which often present themselves to the Judge and the practitioner in the Presidency Court of Small Causes are those relating to the jurisdiction of the court and the author has dealt with them very fully in his commentaries. Some other points of difficulty are those relating to Set Off, Recovery of Immovable Property and Distress. These points are also fully considered. The questions relating to New Trials and Appeals are of great importance in the practice of Small Cause Courts. The learned author has discussed them fully in his work. The

1. (1924) L. R. 51 I.A. 305: I.L.R. 47 Mad. 729: 47 M.L.J. 809 (P.C.).
2. (1899) I.L.R. 22 All. 149.

rules framed under the Act in Calcutta, Madras and Bombay are also appended for reference. There are also references to the provisions of English statutes on analogous point. The decisions have been brought up to date and we have no doubt that the book will be found very useful to practitioners and to judges in the Presidency Courts of Small Causes.

KHAN'S POLICE DIARIES—SUPPLEMENT.

We are glad to acknowledge the receipt of the Supplement to Khan's Police Diaries and Statements conveniently arranged to enable the slips being pasted in their proper places. The Supplement brings the case-law up to April, 1928.